

**Reprint
as at 25 February 2012**



Antarctica (Environmental Protection) Act 1994

Public Act 1994 No 119
Date of assent 6 December 1994
Commencement see section 1

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Foreign Affairs and Trade.

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**Protocol on Environmental Protection to the Antarctic
Treaty**

**An Act to provide for the comprehensive protection of the
Antarctic environment and to recognise Antarctica as a natural**

**reserve devoted to peace and science and to implement the
Protocol on Environmental Protection to the Antarctic Treaty****1 Short Title and commencement**

- (1) This Act may be cited as the Antarctica (Environmental Protection) Act 1994.
- (2) Except as provided in subsection (3), this Act shall come into force on 1 February 1995.
- (3) Section 12, Parts 3 to 5 and sections 56 and 57 and Schedule 1 shall come into force on a date or dates to be appointed by the Governor-General by Order in Council.

Section 1(3): section 12, Parts 3–5, sections 56, 57, and Schedule 1 brought into force, on 23 January 1998, by the Antarctica (Environmental Protection) Act Commencement Order 1998 (SR 1998/1).

**Part 1
Preliminary****2 Application**

Except as otherwise provided in this Act, this Act shall apply—

- (a) to any person in the Ross Dependency;
- (b) to any New Zealand citizen and to any person ordinarily resident in New Zealand;
- (c) to any person who is for the time being a member of, or responsible for organising, any expedition to Antarctica which is organised in New Zealand or which proceeds from New Zealand as its final point of departure for Antarctica;
- (d) in respect of any act or omission occurring on board any ship or aircraft, to any person on board any ship or aircraft that is—
 - (i) a New Zealand ship or a New Zealand aircraft; or
 - (ii) any other ship, whether registered or not and of whatever nationality, which proceeds from New Zealand as its final point of departure for Antarctica.

3 Exception in respect of members of official expeditions of other Contracting Parties

Notwithstanding section 2, this Act (except as provided in section 13) shall not apply to any person—

- (a) who is for the time being a member of, or responsible for organising, an official expedition of another Contracting Party; and
- (b) who is not a New Zealand citizen or a person ordinarily resident in New Zealand.

4 Exception in respect of ships or aircraft supporting official expeditions of other Contracting Parties

Notwithstanding section 2, this Act (except as provided in section 13) shall not apply in respect of any act or omission of a person that occurs on board any ship or aircraft that is for the time being operating, whether exclusively or not, in support of any official expedition of another Contracting Party unless the person is—

- (a) a New Zealand citizen; or
- (b) a person who is ordinarily resident in New Zealand; or
- (c) a person who is for the time being a member of an official New Zealand expedition.

5 Exception in respect of observers and exchanged scientists of other Contracting Parties

Notwithstanding section 2, this Act shall not apply to any person who is a national of another Contracting Party and who is an observer or exchanged scientist, or a member of the staff accompanying any observer or exchanged scientist, while that person is in any part of Antarctica for the purpose of exercising his or her functions, unless the immunity of any such person is waived by the Contracting Party of which the person is a national.

Compare: 1960 No 47 s 5

6 Consent of Attorney-General required for certain proceedings

- (1) Notwithstanding anything in any other enactment, proceedings—

- (a) in respect of any contravention of this Act by a person who is not a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) in respect of any contravention of this Act anywhere in Antarctica outside the Ross Dependency; or
- (c) in respect of any contravention of this Act on board any ship or aircraft that is not a New Zealand ship or a New Zealand aircraft,—
- shall not, by virtue only of the provisions of this Act, be instituted in any court except with the consent of the Attorney-General and on his or her certificate that it is expedient that the proceedings should be instituted.
- (2) Notwithstanding subsection (1), a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney-General's consent has been obtained.
- Compare: 1960 No 47 s 3(3)

7 Interpretation

(1) In this Act, unless the context otherwise requires,—

activity includes—

- (a) any programme of activities;
- (b) any change to an existing activity, including—
- (i) an increase or decrease in the intensity of an existing activity;
 - (ii) the addition of a further activity to an existing activity;
 - (iii) the decommissioning of a facility

Annex means an Annex to the Protocol

another Contracting Party means a Contracting Party to the Antarctic Treaty other than New Zealand

Antarctica means the area south of 60 degrees south latitude, including all ice shelves in that area

Antarctic environment includes—

- (a) the dependent and associated ecosystems of Antarctica and their constituent parts; and
- (b) the natural and physical resources of Antarctica; and

- (c) the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment

Antarctic Treaty means the Antarctic Treaty signed at Washington on 1 December 1959, a copy of the English text of which is set out in Schedule 1 of the Antarctica Act 1960

Committee on Environmental Protection means the Committee established in accordance with Article 11 of the Protocol

Consultative Meeting means a meeting of the Consultative Parties held in accordance with Article IX of the Antarctic Treaty

Consultative Parties means the Contracting Parties to the Antarctic Treaty which are recognised as having the right to appoint representatives to Consultative Meetings

continental shelf means the seabed and subsoil of those submarine areas that extend throughout the natural prolongation of land to the outer edge of the continental margin, as determined in accordance with international law, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend to that distance

Contracting Party means a Contracting Party to the Antarctic Treaty

exchanged scientist means any person who is exchanged pursuant to subparagraph (b) of paragraph 1 of Article III of the Antarctic Treaty (which relates to the exchange of scientific personnel between expeditions and stations in Antarctica)

inspector means a general inspector or a special inspector appointed under section 39

Minister means the Minister of Foreign Affairs and Trade

New Zealand aircraft means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990; and includes any aircraft for the time being used as an aircraft of the New Zealand Defence Force

New Zealand corporation means a body corporate that is incorporated in New Zealand or whose activities are carried on principally in New Zealand

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of the New Zealand Defence Force

observer means an observer designated as such under Article VII(1) of the Antarctic Treaty or under Article 14(2) of the Protocol

official expedition, in relation to a Contracting Party, means any part of the Antarctic programme of that Party

official New Zealand expedition means any part of the New Zealand Antarctic programme

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty that was opened for signature at Madrid on 4 October 1991, a copy of the English text of which is set out in Schedule 2, and includes the Annexes to the Protocol, including any Annex that may be adopted by the Consultative Parties subsequent to the enactment of this Act

Ross Dependency includes all islands and ice shelves within the Dependency, and the continental shelf of the Dependency.

- (2) For the purposes of this Act, a person shall be deemed to be ordinarily resident in New Zealand if—
- (a) his or her home is in New Zealand; or
 - (b) he or she is residing in New Zealand with the intention of residing in New Zealand indefinitely; or
 - (c) having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, he or she is outside New Zealand but has an intention to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely; or
 - (d) the person is a New Zealand corporation or an unincorporated body the majority of whose members are New Zealand citizens or persons ordinarily resident in New Zealand.
- (3) Terms and expressions used and not defined in this Act but defined in the Protocol shall, unless the context otherwise requires, have the same meaning as in the Protocol.

Compare: 1960 No 47 s 2

8 Act to bind the Crown

This Act shall bind the Crown.

9 Purpose and principles

- (1) The purpose of this Act is to promote the comprehensive protection of the Antarctic environment and the value of Antarctica as an area for scientific research.
- (2) In achieving the purpose of this Act, persons exercising functions under this Act, and persons planning or carrying out activities in Antarctica, shall act in a manner consistent with the environmental principles set out in Article 3 of the Protocol.

10 Ministerial directions

- (1) The Minister may direct any person carrying out, or proposing to carry out, any activity in Antarctica—
 - (a) to refrain from carrying out an activity in Antarctica if the Minister is not satisfied that the effects of the activity on the Antarctic environment will be consistent with the purpose and principles in section 9;
 - (b) to abide by such conditions as the Minister considers appropriate in order to avoid or minimise the effects of the activity on the Antarctic environment;
 - (c) to establish such procedures as the Minister considers appropriate to monitor, assess, and verify the effect of the activity on the Antarctic environment;
 - (d) to provide such reports as the Minister considers appropriate on the effects of the activity on the Antarctic environment and of any changes to the activity, or on procedures established for monitoring the activity;
 - (e) to modify, suspend, or cancel the activity in order to avoid effects on the Antarctic environment which are inconsistent with the purpose and principles in section 9;
 - (f) to pay any bond that the Minister considers appropriate in order to ensure that the activity is carried out in accordance with an environmental evaluation or with any directions made by the Minister under this section.
- (2) Every person commits an offence who—

- (a) wilfully fails to comply with a direction given by the Minister under this section; or
 - (b) in any document prepared pursuant to any such direction,—
 - (i) makes a statement that is false or misleading in a material particular knowing it to be false or misleading; or
 - (ii) omits any matter knowing that the omission makes the document false or misleading in a material particular.
- (3) Every person who commits an offence against subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000.

Compare: 1981 No 53 s 13

Part 2 Prohibition of mineral resource activities

11 Prohibition of mineral resource activities

Every person commits an offence who undertakes any mineral resource activities in any of the following areas:

- (a) the continent of Antarctica (including all its ice shelves);
- (b) the Antarctic islands, that is to say, islands south of 60 degrees south latitude;
- (c) the areas of continental shelf that are adjacent to that continent or those islands.

12 Additional prohibition of mineral resource activities by New Zealanders

Every New Zealand citizen and every New Zealand corporation commits an offence who undertakes any mineral resource activities in any other area of Antarctica than the areas referred to in section 11.

13 Additional prohibition of mineral resource activities in Ross Dependency

- (1) Every person referred to in section 3 or section 4 to whom this Act would not otherwise apply commits an offence who undertakes any mineral resource activities in the Ross Dependency.
- (2) Section 6, and the provisions of this Part and of Part 6, shall, in so far as they are applicable, apply in respect of an offence against this section.

14 Meaning of mineral resource activities

In this Part, **mineral resource activities**—

- (a) means prospecting, exploration, and mining within the meaning of the Crown Minerals Act 1991;
- (b) includes logistic support activities in connection with mineral resource activities;
- (c) excludes, notwithstanding paragraphs (a) and (b), bona fide scientific research undertaken by any official expedition of a Contracting Party and bona fide logistic support activities associated with any such scientific research.

15 Penalties

Every person who commits an offence against this Part is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.

Compare: 1991 No 70 s 101(1)

Part 3
Environmental impact assessment

16 Purpose

The purpose of this Part is to give effect to Article 8 of and Annex I to the Protocol.

17 Preliminary environmental evaluation

- (1) Any person proposing to carry out any activity in Antarctica shall prepare a preliminary environmental evaluation.
- (2) The preliminary environmental evaluation shall contain—
 - (a) a description of the proposed activity, including its purpose, location, duration, and intensity; and
 - (b) a statement as to whether or not the person considers that the activity has less than a minor or transitory effect on the Antarctic environment; and
 - (c) a statement as to whether or not another Contracting Party is applying, or has applied, the environmental assessment procedures set out in Annex I of the Protocol to the activity; and
 - (d) the name and contact address in New Zealand of the person; and
 - (e) the number of persons in the expedition likely to carry out the activity; and
 - (f) the date and place of final departure for Antarctica.
- (3) The preliminary environmental evaluation shall be sent to the Minister for consideration.
- (4) If the Minister determines that the activity is likely to have less than a minor or transitory impact on the Antarctic environment, the Minister shall notify the person that the activity may be carried out.

18 Initial environmental evaluation

- (1) Any person proposing to carry out any activity in Antarctica shall prepare an initial environmental evaluation unless—
 - (a) the Minister has determined that the activity is likely to have less than a minor or transitory effect on the Antarctic environment; or
 - (b) the person decides to proceed directly to the preparation of a comprehensive environmental evaluation.
- (2) The initial environmental evaluation—
 - (a) shall contain sufficient detail to enable an assessment to be made of whether the activity may have more than a minor or transitory effect on the Antarctic environment; and

- (b) shall include the matters referred to in Article 2(1) of Annex I to the Protocol; and
 - (c) shall be sent to the Minister for consideration, together with such fee as may be prescribed.
- (3) If the Minister, after such consultation as he or she considers necessary, is satisfied that the initial environmental evaluation indicates that the activity is likely to have no more than a minor or transitory effect on the Antarctic environment, then the Minister shall notify the applicant that the activity may, subject to any directions made pursuant to section 10, be carried out.
- (4) If the Minister, after such consultation as he or she considers necessary, is satisfied that the initial environmental evaluation or other evidence indicates that the activity is likely to have more than a minor or transitory effect on the Antarctic environment, the Minister shall notify the applicant that a draft comprehensive environmental evaluation of the effects of the activity is required to be prepared in accordance with section 19.

19 Draft comprehensive environmental evaluation

- (1) Any person proposing to carry out any activity in Antarctica shall prepare a draft comprehensive environmental evaluation—
- (a) if required to do so by the Minister under section 18(4); or
 - (b) if the activity is likely to have more than a minor or transitory effect on the Antarctic environment and no initial environmental evaluation has been prepared.
- (2) The draft comprehensive environmental evaluation—
- (a) shall include the matters referred to in Article 3(2) of Annex I to the Protocol; and
 - (b) shall be sent to the Minister for consideration, together with such fee as may be prescribed.
- (3) The Minister shall—
- (a) circulate a copy of the draft comprehensive environmental evaluation to all Parties to the Protocol and to the Committee on Environmental Protection for consideration; and

- (b) publicly notify the draft comprehensive environmental evaluation by publishing a notice in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin stating—
- (i) where the draft comprehensive environmental evaluation may be inspected; and
 - (ii) that any person may make comments on that draft; and
 - (iii) the closing date for comments, which shall be at least 90 days after public notification; and
 - (iv) the address to which any comments should be sent.

20 Final comprehensive environmental evaluation

- (1) Any person who has prepared a draft comprehensive environmental evaluation may be required by the Minister, by notice in writing, to prepare a final comprehensive environmental evaluation—
- (a) once that draft evaluation has been considered by the Consultative Meeting, on the advice of the Committee on Environmental Protection; or
 - (b) if the Minister is of the view that the Consultative Meeting is unreasonably delaying its consideration of that draft.
- (2) The final comprehensive environmental evaluation—
- (a) shall address and include or summarise any comments made by the Committee on Environmental Protection and the Consultative Meeting, by the Minister, and by other persons who made comments on the draft comprehensive environmental evaluation; and
 - (b) shall be sent to the Minister for consideration.
- (3) The Minister shall, after considering the final environmental evaluation, notify the applicant—
- (a) whether or not the activity may be carried out; and
 - (b) of any directions made by the Minister pursuant to section 10.

21 Joint environmental evaluation

A joint evaluation may be made under this Part by the organiser of an expedition or by any other person on behalf of all or some of the members of the expedition who may carry out an activity.

22 Supply of further information

The Minister may, if he or she considers it desirable to do so for the purpose of ensuring compliance with this Act, require any person who submits any document under this Part to supply the Minister with—

- (a) a list of the names and addresses of every proposed member of the expedition; or
- (b) such other information as the Minister may reasonably require.

23 Exemptions from this Part

- (1) The Minister may, in his or her discretion, exempt any person from the requirements of this Part if satisfied that another Contracting Party is applying, or has applied, or will apply, the environmental assessment procedures set out in Annex I of the Protocol to the activity.
- (2) No person exempted under subsection (1) shall be liable for any offence under this Part other than an offence under section 24(1)(e).

24 Offences

- (1) Every person commits an offence who,—
 - (a) being the organiser of an expedition to Antarctica, fails, without reasonable excuse, to ensure that the provisions of this Part in respect of environmental evaluations have been complied with; or
 - (b) without reasonable excuse carries out any activity in Antarctica before the Minister has given notification that the activity may be carried out; or
 - (c) in the case of an activity that is the subject of an environmental evaluation approved under this Part, without reasonable excuse carries out the activity in Antarctica otherwise than in accordance with the evaluation; or

- (d) being the organiser of an expedition to Antarctica, fails, without reasonable excuse, to inform any member of the expedition who is proposing to carry out an activity that is the subject of an environmental evaluation approved under this Part of the manner in which that activity should be carried out in order to be in accordance with the evaluation; or
 - (e) in any document prepared pursuant to this Part—
 - (i) makes a statement that is false or misleading in a material particular knowing it to be false or misleading; or
 - (ii) omits any matter knowing that the omission makes the document false or misleading in a material particular; or
 - (f) without reasonable excuse fails to supply any information required to be supplied under section 22.
- (2) Subsection (1)(a) and subsection (1)(d) apply only to a person—
- (a) who is responsible for organising any expedition to Antarctica which is organised in New Zealand or which proceeds from New Zealand as its final point of departure for Antarctica; or
 - (b) who is a New Zealand citizen or a person ordinarily resident in New Zealand.
- (3) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000.

Part 4

Measures for conservation of Antarctic fauna and flora and protected areas

25 Purpose

The purpose of this Part is to give effect to Annexes II and V to the Protocol.

26 Interpretation

In this Part, unless the context otherwise requires,—

Antarctic Specially Managed Area means any area which the Consultative Parties have designated as an Antarctic Specially Managed Area

Antarctic Specially Protected Area means any area which the Consultative Parties have designated as an Antarctic Specially Protected Area

Convention for the Conservation of Antarctic Seals means the Convention done at London on 1 June 1972

Convention on the Conservation of Antarctic Marine Living Resources means the Convention that was opened for signature at Canberra on 1 August 1980, a copy of the English text of which is set out in Schedule 1 of the Antarctic Marine Living Resources Act 1981

harmfully interfere has a meaning corresponding to the meaning of harmful interference in Article 1 of Annex II to the Protocol

Historic Site and **Historic Monument** means any Historic Site or Historic Monument, as the case may be, approved by the Consultative Parties for listing as an Historic Site or Historic Monument

management plan means a management plan approved by the Consultative Parties in respect of an Antarctic Specially Protected Area or an Antarctic Specially Managed Area

permit means a formal permission in writing issued by the Minister.

27 Respect for protected areas

- (1) Every person carrying out activities in any Antarctic Specially Protected Area or any Antarctic Specially Managed Area shall act in accordance with the requirements of any management plan applying to any such Area.
- (2) Every person in Antarctica shall refrain from damaging, removing, or destroying any Historic Site or Historic Monument or its contents.
- (3) Notwithstanding subsection (2), any part of, or the contents of, any Historic Site or Historic Monument may be removed,—
 - (a) in accordance with the written authorisation of the Minister,—

- (i) for the purpose of restoration or protection; or
 - (ii) if the removal is consistent with any management plan that applies to the Historic Site or Historic Monument; or
- (b) in an emergency, for the purpose of protection.
- (4) Every person commits an offence who does any act in contravention of this section.

Section 27(3)(a): replaced, on 25 February 2012, by section 4 of the Antarctica (Environmental Protection) Amendment Act 2012 (2012 No 3).

28 Acts prohibited except in accordance with permit

- (1) No person shall—
- (a) enter or carry out any activity in an Antarctic Specially Protected Area; or
 - (b) take or attempt to take any native bird or native mammal in Antarctica; or
 - (c) remove or damage such quantities of native plants in Antarctica that their local distribution or abundance is significantly affected; or
 - (d) harmfully interfere with native plants or native mammals or native birds or native invertebrates; or
 - (e) introduce onto land or ice shelves or into water in Antarctica any species of animal, plant, or micro-organism not native to that area; or
 - (f) import any non-sterile soil into Antarctica,—
except in accordance with a permit issued under this Part.
- (2) Subsection (1)(e) shall not prevent any person introducing food into Antarctica to the extent permitted by, and that is in accordance with the requirements of, the Protocol.
- (3) No person shall import into Antarctica any dressed poultry knowing that an inspection in accordance with the Protocol revealed evidence of any disease referred to in Appendix C to Annex II to the Protocol.
- (4) Every person commits an offence who does any act in contravention of this section.

29 Application for permits

- (1) Every person who wishes to obtain a permit to do any act referred to in section 28(1) shall make application in writing to the Minister.
- (2) Every application shall be accompanied by such fee as may be prescribed.
- (3) Every application shall specify—
 - (a) the full name and address of the applicant; and
 - (b) the nature and purpose of the activity to which the application relates; and
 - (c) when, where, by whom, and how the activity is to be conducted.
- (4) A joint application may be made in respect of all or some of the members of an expedition to Antarctica, and may be issued jointly to all or some of the persons who may at any time be members of that expedition.
- (5) Subject to the provisions of this Part the Minister, in his or her discretion, may issue a permit or refuse to issue a permit, or issue a permit subject to such conditions as he or she thinks fit.
- (6) Any permit may be revoked or suspended, and the conditions attached to it amended, at any time by the Minister.
- (7) Subject to subsection (4), no permit shall be transferred to any other person except with the consent in writing of the Minister.

30 Restrictions on permits in respect of Antarctic Specially Protected Areas

A permit to enter and carry out any activity in an Antarctic Specially Protected Area shall be issued—

- (a) only in accordance with the requirements of any management plan relating to that area; and
- (b) only in accordance with, and subject to the restrictions and conditions set out in, Annex V to the Protocol; and
- (c) subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and principles in section 9.

31 Restrictions on permits to take native fauna and flora

A permit to do any act referred to in paragraph (b) or paragraph (c) or paragraph (d) of section 28(1) shall be issued—

- (a) only in accordance with, and subject to the restrictions and conditions set out in, Annex II to the Protocol; and
- (b) subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and principles in section 9.

32 Restrictions on permits to introduce non-indigenous animals, plants, or micro-organisms into Antarctica

A permit to bring into Antarctica any animal, plant, or micro-organism not native to Antarctica, or to import any non-sterile soil, shall be issued—

- (a) only in accordance with, and subject to the restrictions and conditions set out in, Article 4 of Annex II to the Protocol and the appendices to that Annex; and
- (b) subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and principles in section 9.

33 Offences

(1) Every person who commits an offence against this Part is liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding \$100,000.

(2) Notwithstanding any other provisions of this Part, any act or omission by any person which occurred—

- (a) in accordance with a permit issued by any Party to the Protocol other than New Zealand; or
- (b) in accordance with a permit issued by a Party to the Convention for the Conservation of Antarctic Seals in accordance with that Convention; or
- (c) in accordance with a permit issued in accordance with the Antarctic Marine Living Resources Act 1981; or
- (d) in accordance with a permit issued by a Party to the Convention on the Conservation of Antarctic Marine Living Resources in accordance with that Convention,—

shall not be an offence against this Part.

Part 5 **Waste disposal**

34 General principles of waste disposal and waste management

All persons carrying out activities in Antarctica shall act in a manner consistent with the waste disposal and waste management principles of Article 1 of Annex III to the Protocol.

35 Waste disposal

Articles 2 to 7 of Annex III to the Protocol shall be part of the law of New Zealand.

36 Disposal of waste, etc, unlawful

- (1) It shall be unlawful to dispose of waste in Antarctica otherwise than in accordance with Articles 2 to 7 to Annex III of the Protocol.
- (2) It shall be unlawful to otherwise contravene Articles 2 to 7 of Annex III to the Protocol.
- (3) It shall be unlawful to dispose of waste in Antarctica by open burning.

37 Offences

- (1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$100,000, who acts in contravention of section 36.
- (2) Notwithstanding anything in subsection (1), no person shall be sentenced to imprisonment for any contravention of section 36 unless that person acted with intent to cause the contravention or was reckless or negligent as to whether a contravention would result.

Part 6 **Miscellaneous provisions**

Emergencies in Antarctica

38 Emergencies in Antarctica

- (1) Any act or omission by any person which occurs in a case of emergency relating—
- (a) to the safety of human life; or
 - (b) to the safety of ships or aircraft; or
 - (c) to equipment or facilities of high value; or
 - (d) to the protection of the Antarctic environment,—
- shall not be an offence under section 10 or section 24 or Part 4 or Part 5.
- (2) Every person who commits any act or omission to which this section applies shall supply the Minister, within 60 days, with a full explanation of the act or omission and the reasons for it.
- (3) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who fails to comply with subsection (2).

Inspectors

39 Appointment of inspectors

- (1) The Minister may issue a warrant appointing any person as—
- (a) a general inspector to report to him or her whether the provisions of this Act, and any regulations made under this Act, have been complied with;
 - (b) a special inspector to enforce the provisions of this Act.
- (2) No person shall be appointed as a special inspector unless—
- (a) the person has exercised, in a professional capacity, functions and powers similar to those conferred on special inspectors by this Act; and
 - (b) the person is an officer or employee of the State services.

40 Provisions relating to appointment

- (1) Any inspector may be appointed to report either on any specific case or on any cases generally.

- (2) Any inspector shall be appointed on such terms and conditions as may be approved by the Minister; but, if any person so appointed is a full-time officer or employee of the State services, the person shall not be entitled to any additional remuneration in respect of the appointment.
- (3) Every inspector shall be appointed for such term as the Minister thinks fit, and may be reappointed.
- (4) Any inspector may at any time have his or her warrant revoked at the discretion of the Minister, or may at any time surrender his or her warrant to the Minister.
- (5) Any inspector shall, on the expiration of the term of the appointment, or on removal from office, surrender his or her warrant to the Minister.
- (6) No inspector shall, by virtue of appointment as an inspector under this Act, be deemed to be employed in the service of Her Majesty for the purpose of the State Sector Act 1988.

Compare: 1981 No 53 s 8(2)–(5)

41 Inspectors' general power of entry and inspection

- (1) Any inspector may at any time enter and inspect any area of Antarctica, and have access to any things, for the purpose of carrying out his or her functions under this Act or any regulations made under this Act.
- (2) In this section, and in sections 42 to 46,—
area includes all places, facilities, installations, equipment, ships, aircraft, and vehicles
thing includes any document, plant, or animal.

42 Search and seizure by special inspectors with warrant

- (1) Subject to subsection (2), a District Court Judge, a duly authorised Justice, a Community Magistrate, or a Registrar (not being a constable), who, on application made by a special inspector, is satisfied that there are reasonable grounds for believing that there is on or in any area specified in the application any thing—
 - (a) in respect of which an offence against this Act has been or may have been committed; or

- (b) that is or may be evidence of the commission of an offence against this Act; or
- (c) that is intended to be used for the commission of an offence against this Act—
may issue, unconditionally or subject to conditions, a warrant authorising the entry and search of the area, at any time on 1 occasion within 14 days of the issue of the warrant (or within such further time as may be specified in the warrant), and the seizure of any such thing that may be found on or in the area.
- (2) The special inspector applying for a warrant under subsection (1)—
- (a) shall first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the place concerned, and (if so) the following matters:
- (i) the offence or offences alleged in respect of each application;
- (ii) the results of each application; and
- (b) shall disclose on the application for the warrant the results of the inquiries.
- (3) Every warrant under subsection (1) shall be directed to and exercisable only by a special inspector or a constable.
- (4) A person exercising a warrant under subsection (1) may use such force in entering and searching the area specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the area as is reasonable in the circumstances.
- Section 42(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).
- Section 42(1): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).
- Section 42(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

- 43 Search and seizure by special inspectors without warrant**
- (1) Any special inspector who is satisfied that there are reasonable grounds for believing, in respect of any area,—
- (a) that there are grounds for the issue of a warrant under section 42; and

- (b) that it is not practicable for the special inspector to obtain possession of a warrant; and
 - (c) that there is a real risk that an offence against this Act may be committed, or evidence of the commission of an offence may be destroyed, before any such warrant could be obtained; and
 - (d) that seizure without a warrant is necessary having regard to the gravity of any such offence—
may exercise the powers of search and seizure contained in section 42 as if a warrant had been obtained.
- (2) Every special inspector who seizes any thing without warrant shall, as soon as reasonably practicable, send a written report to the Minister stating the reasons for the seizure without warrant.

44 Obligations of inspectors

Every inspector exercising any power under any of sections 41 to 43—

- (a) shall have with him or her evidence of his or her identity and warrant of appointment as an inspector; and
- (b) shall produce them to any person appearing to be in charge of the area entered—
 - (i) on entering the area (if such a person is then present); and
 - (ii) at any reasonable time thereafter, if asked to do so by the person; and
- (c) if there is no person appearing to be in charge of the area at any time between the time of entry and the time the inspection or search concerned has been completed, shall, as soon as is practicable after completing the inspection or search, give an occupier or person in charge of the area written notice stating that the area has been entered or searched, and specifying the following matters:
 - (i) the time and date of entry or search;
 - (ii) the circumstances and purpose of entry or search;
 - (iii) the name of every person entering;
 - (iv) the principal contents of the warrant of appointment pursuant to which the person is acting;

- (d) where the search is pursuant to a search warrant, shall have the search warrant with him or her and produce it if required to do so; and
- (e) where any thing is seized, shall give an occupier or person in charge of the area a written inventory of all things so seized; and
- (f) shall report any offence or suspected offence to the Police as soon as practicable.

45 Arrest by special inspectors without warrant

- (1) Where a special inspector has reasonable cause to believe—
 - (a) that any person is committing or has committed an offence against this Act; and
 - (b) that there is a real risk that the person may not be able to be served with proceedings under this Act, or may not appear to answer any such proceedings; and
 - (c) that arrest without a warrant is necessary having regard to the gravity of any such offence,—the special inspector may arrest that person.
- (2) Any person called upon to do so by any person referred to in subsection (1) is justified in assisting him or her in good faith to arrest any person.
- (3) Every special inspector who arrests any person without warrant shall, as soon as reasonably practicable,—
 - (a) arrange for an information to be laid in respect of the offence; and
 - (b) deliver the arrested person into the custody of a constable; and
 - (c) send a written report to the Minister stating the reasons for the arrest without warrant.
- (4) Every special inspector shall release on bail any person arrested under this section.
- (5) Every person released on bail shall be released subject to the condition that he or she must attend before such court at such time as the inspector—
 - (a) specifies at the time of granting bail; or
 - (b) where it is not reasonably practicable to so specify at that time, specifies as soon as possible thereafter.

- (6) Sections 32(3), 32(4), 33(1), 33(2), 36, 37(1), 37(3), and 37(4) of the Bail Act 2000 apply to every grant of bail under this section as if every reference to a constable, a Registrar, or a District Court were a reference to a special inspector, and with any other necessary modifications.

Compare: 1989 No 18 s 36A; 1991 No 18 s 14; 1991 No 100 s 5

Section 45(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 45(6): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 45(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

46 Custody of property seized

- (1) Any thing seized under this Act shall be held in the custody of the Crown until—
(a) a decision is made not to lay any information in respect of the alleged offence for which the thing was seized; or
(b) where such an information is laid, the completion of the proceedings in respect of the alleged offence for which the thing was seized, or such other time as the court may determine,—
and shall then be returned to the person entitled to possession of the thing.
- (2) The special inspector shall decide whether or not to arrange for an information to be laid in respect of an alleged offence for which any thing is seized pursuant to this Act as soon as reasonably practicable after the thing is seized.
- (3) The person from whom the thing was seized, or the owner or person entitled to possession of the thing seized, may—
(a) apply to the Minister (if no decision has been made whether or not to lay an information); or
(b) apply to the court (if an information has been laid)—for the release of the thing to any such person.
- (4) The Minister or the court, as the case may be, may order release of the thing under bond in such sum and under such sureties and conditions (if any) as may be specified.

Compare: 1991 No 18 ss 16, 17(1), 20

47 Offence to obstruct inspectors

Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,500, who wilfully obstructs, hinders, resists, or deceives any inspector who is carrying out his or her functions under this Act.

Compare: 1991 No 69 ss 338(3)(a), 339(3)

48 Observers

The Minister may appoint any person as an observer for the purpose of carrying out inspections in accordance with Article VII of the Antarctic Treaty or Article 14 of the Protocol.

49 Inspectors, etc, protected from proceedings

No action or proceedings shall be brought against the Crown, or any inspector, or any observer, or any person acting under the instructions of an inspector, in respect of any act or omission of an inspector or observer while carrying out his or her functions under this Act where that person has acted in good faith and with reasonable care.

Compare: 1981 No 53 s 10

50 Liability for causing inspector to incur expense

Where any person causes an inspector to incur any expense that the inspector would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under this Act, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that person shall, upon conviction, reimburse the Crown for the amount of any such expense that is, in the opinion of the convicting court, reasonably and properly incurred, and that amount shall be recoverable from that person in like manner as a fine.

Compare: 1981 No 53 s 15

Miscellaneous provisions

51 Service of documents

- (1) Any direction given by the Minister or any other document to be sent to a person may be—
 - (a) delivered to that person; or
 - (b) posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
 - (c) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or
 - (d) read to the person via any telecommunication or radio-communication link if the person is in Antarctica; or
 - (e) served in accordance with any directions as to service given by a court.
- (2) Any direction or other document given in accordance with paragraph (b) or paragraph (c) of subsection (1) may be sent to—
 - (a) the person's address in New Zealand (if the person is in New Zealand); or
 - (b) the station in Antarctica at which the person is based; or
 - (c) the ship on board which the person is.
- (3) Any direction or other document may be sent by any combination of methods described in subsection (1).
- (4) A direction or other document is not deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Compare: 1993 No 105 ss 391, 392

52 Evidentiary certificates

- (1) The Minister may give a certificate stating, at any time specified in the certificate,—
 - (a) that an aircraft or ship was, or was not, a New Zealand aircraft or New Zealand ship;
 - (b) that an expedition was, or was not, an official New Zealand expedition or an official expedition in relation to another Contracting Party:

- (c) that a ship or aircraft was, or was not, operating, whether exclusively or not, in support of any official expedition of another Contracting Party;
 - (d) any fact relevant to any question whether or not any person is or was an observer or exchanged scientist, or a member of the staff accompanying an observer or exchanged scientist, or whether or not any immunity has been waived under section 5.
- (2) In any proceedings for an offence against this Act,—
- (a) a certificate given under subsection (1)(a) is *prima facie* evidence of the matters specified in the certificate;
 - (b) a certificate given under subsection (1)(b) or (c) or (d) is conclusive evidence of the matters specified in the certificate.
- (3) For the purposes of this section, a document purporting to be a certificate under this section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

Compare: 1960 No 47 s 6; 1981 No 53 s 12; 1993 No 48 s 6

53 No derogation from certain enactments

Nothing in this Act shall derogate from the provisions of—

- (a) the Antarctic Marine Living Resources Act 1981;
- (b) the Marine Mammals Protection Act 1978;
- (c) the Antarctica Act 1960;
- (d) the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977;
- (e) Ross Dependency Whaling Regulations 1929, as published in the *Gazette* on 31 October 1929 at pages 2747 and 2748.

Compare: 1981 No 53 s 16

Section 53(d): amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

54 Application of Maritime Transport Act 1994

- (1) The Governor-General may from time to time, by Order in Council, declare, for the purpose of implementing or giving better effect to Annex IV of the Protocol, that—
- (a) any provisions of the Maritime Transport Act 1994; and

- (b) any marine protection rules made under that Act,— as may be specified shall apply in or extend to Antarctic waters in such manner and with such modifications as may be specified in the order, and the order shall have effect accordingly.
- (2) Nothing in this section limits—
- (a) the provisions of that Act or those rules that apply in Antarctic waters regardless of whether any order is made; or
 - (b) the power to make marine protection rules under that Act; or
 - (c) the application of other provisions of this Act in respect of an offence against the Maritime Transport Act 1994 or marine protection rules made under that Act to which this section applies.
- (3) In this section,—
- Antarctic waters** means the territorial sea of New Zealand adjacent to the Ross Dependency and other seas south of 60 degrees south latitude
- territorial sea** means the territorial sea of New Zealand as provided for in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.
- Section 54(3) **territorial sea**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

55 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing the manner or content of applications, notices, environmental evaluations, or any other documentation or information as may be required under this Act;
 - (b) prescribing the fees payable or the methods of calculating fees in respect of applications under this Act and the submission of environmental evaluations;
 - (c) prescribing the procedure to be followed under Part 3;

- (d) specifying the areas which are, within the meaning of section 26, Antarctic Specially Managed Areas or Antarctic Specially Protected Areas;
 - (e) specifying the sites or monuments which are, within the meaning of section 26, Historic Sites or Historic Monuments;
 - (f) prescribing any emission standards and equipment guidelines in respect of incinerators;
 - (g) giving effect to any measures adopted in accordance with the Protocol or the Antarctic Treaty for the protection of the Antarctic environment and the value of Antarctica as an area for scientific research;
 - (h) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) The Governor-General may from time to time, by Order in Council,—
- (a) amend Schedule 2 by making such amendments to the text of the Protocol set out in that schedule as are required to bring that text up to date;
 - (b) revoke Schedule 2, and substitute a new Schedule 2 setting out in an up-to-date form the text of the Protocol set out in that schedule.
- (3) Any regulations made under subsection (2) shall,—
- (a) if made on or before 30 June in any year, expire on the close of 31 December of that year except so far as they are expressly confirmed by Act of Parliament passed during that year; and
 - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except so far as they are expressly confirmed by Act of Parliament passed before the end of that following year.
- (4) Any regulations made under this section may prescribe offences for contravention of, or non-compliance with, their provisions and penalties, on the summary conviction of any offender, not exceeding in any case a fine of \$5,000.
- (5) No Order in Council shall be made under subsection (1)(g) except on the advice of the Minister given after consultation by that Minister with the Minister for the Environment and the

Minister of Conservation and such other Ministers and persons as the Minister considers appropriate.

Compare: 1990 No 98 s 42C(2); 1992 No 75 s 22; 1993 No 95 s 151

56 Amendments to other Acts

- (1) The enactments specified in Schedule 1 are hereby amended in the manner indicated in that schedule.
- (2) *Amendment(s) incorporated in the Act(s).*

57 Repeal and revocations

- (1) The Antarctica Amendment Act 1970 is hereby consequentially repealed.
- (2) The Antarctic (Fauna and Flora) Regulations 1971 (SR 1971/278) and the Antarctic (Fauna and Flora) Regulations 1971, Amendment No 1 (SR 1973/284) are hereby revoked.
- (3) The Antarctica (Specially Protected Areas) Order 1971 (SR 1971/279) is hereby revoked.

Schedule 1
Enactments amended

s 56

Antarctica Act 1960 (1960 No 47) (RS Vol 6, p 21)
Amendment(s) incorporated in the Act(s).

Antarctic Marine Living Resources Act 1981 (1981 No 53)
Amendment(s) incorporated in the Act(s).

Environment Act 1986 (1986 No 127)
Amendment(s) incorporated in the Act(s).

Marine Mammals Protection Act 1978 (1978 No 80)
Amendment(s) incorporated in the Act(s).

Schedule 2

s 7(1)

**Protocol on Environmental Protection to
the Antarctic Treaty**

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[*This table is not part of the Protocol and is included for
convenience*]

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Preamble

The States Parties to this Protocol to the Antarctic Treaty, hereinafter referred to as the Parties,

Convinced of the need to enhance the protection of the Antarctic environment and dependent and associated ecosystems;

Convinced of the need to strengthen the Antarctic Treaty system so as to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty;

Recalling the designation of Antarctica as a Special Conservation Area and other measures adopted under the Antarctic Treaty system to protect the Antarctic environment and dependent and associated ecosystems;

Acknowledging further the unique opportunities Antarctica offers for scientific monitoring of and research on processes of global as well as regional importance;

Reaffirming the conservation principles of the Convention on the Conservation of Antarctic Marine Living Resources;

Convinced that the development of a comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems is in the interest of mankind as a whole;

Desiring to supplement the Antarctic Treaty to this end;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Protocol:

- (a) “The Antarctic Treaty” means the Antarctic Treaty done at Washington on 1 December 1959;
- (b) “Antarctic Treaty area” means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty;
- (c) “Antarctic Treaty Consultative Meetings” means the meetings referred to in Article IX of the Antarctic Treaty;
- (d) “Antarctic Treaty Consultative Parties” means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty;
- (e) “Antarctic Treaty system” means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments;
- (f) “Arbitral Tribunal” means the Arbitral Tribunal established in accordance with the Schedule to this Protocol, which forms an integral part thereof;
- (g) “Committee” means the Committee for Environmental Protection established in accordance with Article 11.

Article 2 Objective and designation

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

Article 3 Environmental principles

- 1. The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarc-

Article 3—continued

tica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

2. To this end:
 - (a) activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;
 - (b) activities in the Antarctic Treaty area shall be planned and conducted so as to avoid:
 - (i) adverse effects on climate or weather patterns;
 - (ii) significant adverse effects on air or water quality;
 - (iii) significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments;
 - (iv) detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora;
 - (v) further jeopardy to endangered or threatened species or populations of such species; or
 - (vi) degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;
 - (c) activities in the Antarctic Treaty area shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the Antarctic environment and dependent and associated ecosystems and on the value of Antarctica for the conduct of scientific research; such judgments shall take full account of:
 - (i) the scope of the activity, including its area, duration and intensity;
 - (ii) the cumulative impacts of the activity, both by itself and in combination with other activities in the Antarctic Treaty area;

Article 3—continued

- (iii) whether the activity will detrimentally affect any other activity in the Antarctic Treaty area;
 - (iv) whether technology and procedures are available to provide for environmentally safe operations;
 - (v) whether there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify and provide early warning of any adverse effects of the activity and to provide for such modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment and dependent and associated ecosystems; and
 - (vi) whether there exists the capacity to respond promptly and effectively to accidents, particularly those with potential environmental effects;
 - (d) regular and effective monitoring shall take place to allow assessment of the impacts of ongoing activities, including the verification of predicted impacts;
 - (e) regular and effective monitoring shall take place to facilitate early detection of the possible unforeseen effects of activities carried on both within and outside the Antarctic Treaty area on the Antarctic environment and dependent and associated ecosystems.
3. Activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.
4. Activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required in accordance with Article VII(5) of the Antarctic Treaty, including associated logistic support activities, shall:
- (a) take place in a manner consistent with the principles in this Article; and

Article 3—*continued*

- (b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the Antarctic environment or dependent or associated ecosystems inconsistent with those principles.

Article 4**Relationship with the other components of
the Antarctic Treaty system**

1. This Protocol shall supplement the Antarctic Treaty and shall neither modify nor amend that Treaty.
2. Nothing in this Protocol shall derogate from the rights and obligations of the Parties to this Protocol under the other international instruments in force within the Antarctic Treaty system.

Article 5**Consistency with the other components of
the Antarctic Treaty system**

The Parties shall consult and co-operate with the Contracting Parties to the other international instruments in force within the Antarctic Treaty system and their respective institutions with a view to ensuring the achievement of the objectives and principles of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and of this Protocol.

Article 6
Co-operation

1. The Parties shall co-operate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to:
 - (a) promote co-operative programmes of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems;

Article 6—continued

- (b) provide appropriate assistance to other Parties in the preparation of environmental impact assessments;
 - (c) provide to other Parties upon request information relevant to any potential environmental risk and assistance to minimize the effects of accidents which may damage the Antarctic environment or dependent and associated ecosystems;
 - (d) consult with other Parties with regard to the choice of sites for prospective stations and other facilities so as to avoid the cumulative impacts caused by their excessive concentration in any location;
 - (e) where appropriate, undertake joint expeditions and share the use of stations and other facilities; and
 - (f) carry out such steps as may be agreed upon at Antarctic Treaty Consultative Meetings.
2. Each Party undertakes, to the extent possible, to share information that may be helpful to other Parties in planning and conducting their activities in the Antarctic Treaty area, with a view to the protection of the Antarctic environment and dependent and associated ecosystems.
 3. The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.

Article 7

Prohibition of mineral resource activities

Any activity relating to mineral resources, other than scientific research, shall be prohibited.

Article 8

Environmental impact assessment

1. Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic envir-

Article 8—*continued*

onment or on dependent or associated ecosystems according to whether those activities are identified as having:

- (a) less than a minor or transitory impact;
 - (b) a minor or transitory impact; or
 - (c) more than a minor or transitory impact.
2. Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities.
 3. The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.
 4. Where activities are planned jointly by more than one Party, the Parties involved shall nominate one of their number to co-ordinate the implementation of the environmental impact assessment procedures set out in Annex I.

**Article 9
Annexes**

1. The Annexes to this Protocol shall form an integral part thereof.
2. Annexes, additional to Annexes I–IV, may be adopted and become effective in accordance with Article IX of the Antarctic Treaty.
3. Amendments and modifications to Annexes may be adopted and become effective in accordance with Article IX of the Antarctic Treaty, provided that any Annex may itself make provision for amendments and modifications to become effective on an accelerated basis.
4. Annexes and any amendments and modifications thereto which have become effective in accordance with paragraphs

Article 9—continued

2 and 3 above shall, unless an Annex itself provides otherwise in respect of the entry into effect of any amendment or modification thereto, become effective for a Contracting Party to the Antarctic Treaty which is not an Antarctic Treaty Consultative Party at the time of the adoption, when notice of approval of that Contracting Party has been received by the Depositary.

5. Annexes shall, except to the extent that an Annex provides otherwise, be subject to the procedures for dispute settlement set out in Articles 18 to 20.

**Article 10
Antarctic Treaty Consultative Meetings**

1. Antarctic Treaty Consultative Meetings shall, drawing upon the best scientific and technical advice available:
 - (a) define, in accordance with the provisions of this Protocol, the general policy for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems; and
 - (b) adopt measures under Article IX of the Antarctic Treaty for the implementation of this Protocol.
2. Antarctic Treaty Consultative Meetings shall review the work of the Committee and shall draw fully upon its advice and recommendations in carrying out the tasks referred to in paragraph 1 above, as well as upon the advice of the Scientific Committee on Antarctic Research.

**Article 11
Committee for Environmental Protection**

1. There is hereby established the Committee for Environmental Protection.
2. Each Party shall be entitled to be a member of the Committee and to appoint a representative who may be accompanied by experts and advisers.

Article 11—continued

3. Observer status in the Committee shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Protocol.
4. The Committee shall invite the President of the Scientific Committee on Antarctic Research and the Chairman of the Scientific Committee for the Conservation of Antarctic Marine Living Resources to participate as observers at its sessions. The Committee may also, with the approval of the Antarctic Treaty Consultative Meeting, invite such other relevant scientific, environmental and technical organisations which can contribute to its work to participate as observers at its sessions.
5. The Committee shall present a report on each of its sessions to the Antarctic Treaty Consultative Meeting. The report shall cover all matters considered at the session and shall reflect the views expressed. The report shall be circulated to the Parties and to observers attending the session, and shall thereupon be made publicly available.
6. The Committee shall adopt its rules of procedure which shall be subject to approval by the Antarctic Treaty Consultative Meeting.

Article 12
Functions of the Committee

1. The functions of the Committee shall be to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol, including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings, and to perform such other functions as may be referred to it by the Antarctic Treaty Consultative Meetings. In particular, it shall provide advice on:
 - (a) the effectiveness of measures taken pursuant to this Protocol;
 - (b) the need to update, strengthen or otherwise improve such measures;
 - (c) the need for additional measures, including the need for additional Annexes, where appropriate;

Article 12—continued

- (d) the application and implementation of the environmental impact assessment procedures set out in Article 8 and Annex I;
 - (e) means of minimising or mitigating environmental impacts of activities in the Antarctic Treaty area;
 - (f) procedures for situations requiring urgent action, including response action in environmental emergencies;
 - (g) the operation and further elaboration of the Antarctic Protected Area system;
 - (h) inspection procedures, including formats for inspection reports and checklists for the conduct of inspections;
 - (i) the collection, archiving, exchange and evaluation of information related to environmental protection;
 - (j) the state of the Antarctic environment; and
 - (k) the need for scientific research, including environmental monitoring, related to the implementation of this Protocol.
2. In carrying out its functions, the Committee shall, as appropriate, consult with the Scientific Committee on Antarctic Research, the Scientific Committee for the Conservation of Antarctic Marine Living Resources and other relevant scientific, environmental and technical organizations.

Article 13
Compliance with this Protocol

1. Each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol.
2. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol.
3. Each Party shall notify all other Parties of the measures it takes pursuant to paragraphs 1 and 2 above.
4. Each Party shall draw the attention of all other Parties to any activity which in its opinion affects the implementation of the objectives and principles of this Protocol.

Article 13—continued

5. The Antarctic Treaty Consultative Meetings shall draw the attention of any State which is not a Party to this Protocol to any activity undertaken by that State, its agencies, instrumentalities, natural or juridical persons, ships, aircraft or other means of transport which affects the implementation of the objectives and principles of this Protocol.

**Article 14
Inspection**

1. In order to promote the protection of the Antarctic environment and dependent and associated ecosystems, and to ensure compliance with this Protocol, the Antarctic Treaty Consultative Parties shall arrange, individually or collectively, for inspections by observers to be made in accordance with Article VII of the Antarctic Treaty.
2. Observers are:
 - (a) observers designated by any Antarctic Treaty Consultative Party who shall be nationals of that Party; and
 - (b) any observers designated at Antarctic Treaty Consultative Meetings to carry out inspections under procedures to be established by an Antarctic Treaty Consultative Meeting.
3. Parties shall co-operate fully with observers undertaking inspections, and shall ensure that during inspections, observers are given access to all parts of stations, installations, equipment, ships and aircraft open to inspection under Article VII(3) of the Antarctic Treaty, as well as to all records maintained thereon which are called for pursuant to this Protocol.
4. Reports of inspections shall be sent to the Parties whose stations, installations, equipment, ships or aircraft are covered by the reports. After those Parties have been given the opportunity to comment, the reports and any comments thereon shall be circulated to all the Parties and the Committee, considered at the next Antarctic Treaty Consultative Meeting, and thereafter made publicly available.

Article 15

Emergency response action

1. In order to respond to environmental emergencies in the Antarctic Treaty area, each Party agrees to:
 - (a) provide for prompt and effective response action to such emergencies which might arise in the performance of scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities; and
 - (b) establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems.
2. To this end, the Parties shall:
 - (a) co-operate in the formulation and implementation of such contingency plans; and
 - (b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies.
3. In the implementation of this Article, the Parties shall draw upon the advice of the appropriate international organisations.

Article 16

Liability

Consistent with the objectives of this Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol. Those rules and procedures shall be included in one or more Annexes to be adopted in accordance with Article 9(2).

Article 17

Annual report by Parties

1. Each Party shall report annually on the steps taken to implement this Protocol. Such reports shall include notifications made in accordance with Article 13(3), contingency plans established in accordance with Article 15 and any other notifica-

Article 17—*continued*

- tions and information called for pursuant to this Protocol for which there is no other provision concerning the circulation and exchange of information.
2. Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and made publicly available.

Article 18
Dispute settlement

If a dispute arises concerning the interpretation or application of this Protocol, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means to which the parties to the dispute agree.

1. Each Party, when signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of Articles 7, 8 and 15 and, except to the extent that an Annex provides otherwise, the provisions of any Annex and, insofar as it relates to these Articles and provisions, Article 13:
- (a) the International Court of Justice;
 - (b) the Arbitral Tribunal.
2. A declaration made under paragraph 1 above shall not affect the operation of Article 18 and Article 20(2).
3. A Party which has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

Article 19—continued

4. If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.
5. If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.
6. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until three months after written notice of revocation has been deposited with the Depositary.
7. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.
8. Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.

Article 20
Dispute settlement procedure

1. If the parties to a dispute concerning the interpretation or application of Articles 7, 8 or 15 or, except to the extent that an Annex provides otherwise, the provisions of any Annex or, insofar as it relates to these Articles and provisions, Article 13, have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to Article 18, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by Article 19(4) and (5).
2. The Arbitral Tribunal shall not be competent to decide or rule upon any matter within the scope of Article IV of the Antarctic Treaty. In addition, nothing in this Protocol shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or

Article 20—*continued*

otherwise rule upon any matter within the scope of Article IV of the Antarctic Treaty.

**Article 21
Signature**

This Protocol shall be open for signature at Madrid on the 4th of October 1991 and thereafter at Washington until the 3rd of October 1992 by any State which is a Contracting Party to the Antarctic Treaty.

**Article 22
Ratification, acceptance, approval or
accession**

1. This Protocol is subject to ratification, acceptance or approval by signatory States.
2. After the 3rd of October 1992 this Protocol shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of the United States of America, hereby designated as the Depositary.
4. After the date on which this Protocol has entered into force, the Antarctic Treaty Consultative Parties shall not act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in Antarctic Treaty Consultative Meetings in accordance with Article IX(2) of the Antarctic Treaty unless that Contracting Party has first ratified, accepted, approved or acceded to this Protocol.

**Article 23
Entry into force**

1. This Protocol shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which are Antarctic

Article 23—continued

Treaty Consultative Parties at the date on which this Protocol is adopted.

2. For each Contracting Party to the Antarctic Treaty which, subsequent to the date of entry into force of this Protocol, deposits an instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the thirtieth day following such deposit.

**Article 24
Reservations**

Reservations to this Protocol shall not be permitted.

Article 25

Modification or amendment

1. Without prejudice to the provisions of Article 9, this Protocol may be modified or amended at any time in accordance with the procedures set forth in Article XII(1)(a) and (b) of the Antarctic Treaty.
2. If, after the expiration of 50 years from the date of entry into force of this Protocol, any of the Antarctic Treaty Consultative Parties so requests by a communication addressed to the Depositary, a conference shall be held as soon as practicable to review the operation of this Protocol.
3. A modification or amendment proposed at any Review Conference called pursuant to paragraph 2 above shall be adopted by a majority of the Parties, including 3/4 of the States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.
4. A modification or amendment adopted pursuant to paragraph 3 above shall enter into force upon ratification, acceptance, approval or accession by 3/4 of the Antarctic Treaty Consultative Parties, including ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

Article 25—continued

5. (a) With respect to Article 7, the prohibition on Antarctic mineral resource activities contained therein shall continue unless there is in force a binding legal regime on Antarctic mineral resource activities that includes an agreed means for determining whether, and, if so, under which conditions, any such activities would be acceptable. This regime shall fully safeguard the interests of all States referred to in Article IV of the Antarctic Treaty and apply the principles thereof. Therefore, if a modification or amendment to Article 7 is proposed at a Review Conference referred to in paragraph 2 above, it shall include such a binding legal regime.
(b) If any such modification or amendment has not entered into force within 3 years of the date of its adoption, any Party may at any time thereafter notify to the Depositary of its withdrawal from this Protocol, and such withdrawal shall take effect 2 years after receipt of the notification by the Depositary.

Article 26

Notifications by the Depositary

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

- (a) signatures of this Protocol and the deposit of instruments of ratification, acceptance, approval or accession;
- (b) the date of entry into force of this Protocol and any additional Annex thereto;
- (c) the date of entry into force of any amendment or modification to this Protocol;
- (d) the deposit of declaration and notices pursuant to Article 19; and
- (e) any notification received pursuant to Article 25(5)(b).

Article 27

Authentic texts and registration with the United Nations

1. This Protocol, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to all Contracting Parties to the Antarctic Treaty.
2. This Protocol shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised, have signed the present Protocol.

DONE at Madrid this fourth day of October, one thousand nine hundred and ninety-one.

Schedule to the Protocol

Arbitration

Article 1

1. The Arbitral Tribunal shall be constituted and shall function in accordance with the Protocol, including this Schedule.
2. The Secretary referred to in this Schedule is the Secretary General of the Permanent Court of Arbitration.

Article 2

1. Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of the Protocol for that Party. Each Arbitrator shall be experienced in Antarctic affairs, have thorough knowledge of international law and enjoy the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.
2. Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and

- shall be eligible for redesignation by that Party for additional five year periods.
3. A Party which designated an Arbitrator may withdraw the name of that Arbitrator from the list. If an Arbitrator dies or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question shall notify the Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before the Arbitral Tribunal.
 4. The Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

Article 3

1. The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:
 - (a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2. This appointment shall be included in the notification referred to in Article 4.
 - (b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2.
 - (c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2.The third Arbitrator shall not be either a national of a party to the dispute, or a person designated for the list referred to in Article 2 by a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairperson of the Arbitral Tribunal.
- (d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on

the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him or her in this subparagraph, the President of the Court shall consult the parties to the dispute.

- (e) If the President of the International Court of Justice is unable to perform the functions accorded him or her in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.
2. Any vacancy shall be filled in the manner prescribed for the initial appointment.
3. In any dispute involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1(b) above.

Article 4

The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Secretary to all Parties.

Article 5

1. Unless the parties to the dispute agree otherwise, arbitration shall take place at The Hague, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.

2. The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

Article 6

1. The Arbitral Tribunal, where it considers that *prima facie* it has jurisdiction under the Protocol, may:
 - (a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute;
 - (b) prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.
2. The parties to the dispute shall comply promptly with any provisional measure prescribed under paragraph 1(b) above pending an award under Article 10.
3. Notwithstanding the time period in Article 20 of the Protocol, a party to a dispute may at any time, by notification to the other party or parties to the dispute and to the Secretary in accordance with Article 4, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article 3, except that the time periods in Article 3(1)(b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairperson.
4. Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles 18, 19 and 20 of the Protocol.

Article 7

Any party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

Article 8

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, in accordance with their law and using all means at their disposal, shall provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 9

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

Article 10

1. The Arbitral Tribunal shall, on the basis of the provisions of the Protocol and other applicable rules and principles of international law that are not incompatible with such provisions, decide such disputes as are submitted to it.
2. The Arbitral Tribunal may decide, *ex aequo et bono*, a dispute submitted to it, if the parties to the dispute so agree.

Article 11

1. Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.
2. The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Secretary who shall transmit it to all Parties.
3. The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.
4. The award shall have no binding force except in respect of that particular case.
5. Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Ar-

bitrators, shall be borne by the parties to the dispute in equal shares.

Article 12

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11, shall be made by a majority of the Arbitrators who may not abstain from voting.

Article 13

1. This Schedule may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Schedule which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Annex I to the Protocol on Environmental Protection to the Antarctic Treaty

Environmental impact assessment

Article 1 Preliminary stage

1. The environmental impacts of proposed activities referred to in Article 8 of the Protocol shall, before their commencement, be considered in accordance with appropriate national procedures.
2. If an activity is determined as having less than a minor or transitory impact, the activity may proceed forthwith.

Article 2 Initial Environmental Evaluation

1. Unless it has been determined that an activity will have less than a minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared. It shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact and shall include:
 - (a) a description of the proposed activity, including its purpose, location, duration, and intensity; and
 - (b) consideration of alternatives to the proposed activity and any impacts that the activity may have, including consideration of cumulative impacts in the light of existing and known planned activities.
2. If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity.

Article 3 Comprehensive Environmental Evaluation

1. If an Initial Environmental Evaluation indicates or if it is otherwise determined that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation shall be prepared.
2. A Comprehensive Environmental Evaluation shall include:
 - (a) a description of the proposed activity including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;
 - (b) a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;
 - (c) a description of the methods and data used to forecast the impacts of the proposed activity;
 - (d) estimation of the nature, extent, duration, and intensity of the likely direct impacts of the proposed activity;

- (e) consideration of possible indirect or second order impacts of the proposed activity;
 - (f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;
 - (g) identification of measures, including monitoring programmes, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;
 - (h) identification of unavoidable impacts of the proposed activity;
 - (i) consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;
 - (j) an identification of gaps in knowledge and uncertainties encountered in compiling the information required under this paragraph;
 - (k) a non-technical summary of the information provided under this paragraph; and
 - (l) the name and address of the person or organization which prepared the Comprehensive Environmental Evaluation and the address to which comments thereon should be directed.
3. The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.
 4. The draft Comprehensive Environmental Evaluation shall be forwarded to the Committee at the same time as it is circulated to the Parties, and at least 120 days before the next Antarctic Treaty Consultative Meeting, for consideration as appropriate.
 5. No final decision shall be taken to proceed with the proposed activity in the Antarctic Treaty area unless there has been an opportunity for consideration of the draft Comprehensive Environmental Evaluation by the Antarctic Treaty Consultative Meeting on the advice of the Committee, provided that no decision to proceed with a proposed activity shall be delayed

through the operation of this paragraph for longer than 15 months from the date of circulation of the draft Comprehensive Environmental Evaluation.

6. A final Comprehensive Environmental Evaluation shall address and shall include or summarise comments received on the draft Comprehensive Environmental Evaluation. The final Comprehensive Environmental Evaluation, notice of any decisions relating thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed activity, shall be circulated to all Parties, which shall also make them publicly available, at least 60 days before the commencement of the proposed activity in the Antarctic Treaty area.

Article 4 Decisions to be based on Comprehensive Environmental Evaluations

Any decision on whether a proposed activity, to which Article 3 applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the Comprehensive Environmental Evaluation as well as other relevant considerations.

Article 5 Monitoring

1. Procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the impact of any activity that proceeds following the completion of a Comprehensive Environmental Evaluation.
2. The procedures referred to in paragraph 1 above and in Article 2(2) shall be designed to provide a regular and verifiable record of the impacts of the activity in order, *inter alia*, to:
 - (a) enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and
 - (b) provide information useful for minimising or mitigating impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the activity.

Article 6 Circulation of information

1. The following information shall be circulated to the Parties, forwarded to the Committee and made publicly available:
 - (a) a description of the procedures referred to in Article 1;
 - (b) an annual list of any Initial Environmental Evaluations prepared in accordance with Article 2 and any decisions taken in consequence thereof;
 - (c) significant information obtained, and any action taken in consequence thereof, from procedures put in place in accordance with Articles 2(2) and (5); and
 - (d) information referred to in Article 3(6).
2. Any Initial Environmental Evaluation prepared in accordance with Article 2 shall be made available on request.

Article 7 Cases of emergency

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this Annex.
2. Notice of activities undertaken in cases of emergency, which would otherwise have required preparation of a Comprehensive Environmental Evaluation, shall be circulated immediately to all Parties and to the Committee and a full explanation of the activities carried out shall be provided within 90 days of those activities.

Article 8 Amendment or modification

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty**

Conservation of Antarctic fauna and flora

Article 1 Definitions

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;
- (c) “native plant” means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;
- (d) “native invertebrate” means any terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorized by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take” or “taking” means to kill, injure, capture, handle or molest, a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:
 - (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds and seals;

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty —*continued***

- (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds and seals;
 - (iii) using explosives or firearms in a manner that disturbs concentrations of birds and seals;
 - (iv) wilfully disturbing breeding or moulting birds or concentrations of birds and seals by persons on foot;
 - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
 - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.

Article 2 Cases of emergency

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 3 Protection of native fauna and flora

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.
2. Such permits shall specify the authorized activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
 - (a) to provide specimens for scientific study or scientific information;
 - (b) to provide specimens for museums, herbaria, zoological and botanical gardens, or other educational or cultural institutions or uses; and

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty —*continued***

- (c) to provide for unavoidable consequences of scientific activities not otherwise authorized under sub-paragraphs (a) or (b) above, or of the construction and operation of scientific support facilities.
- 3. The issue of such permits shall be limited so as to ensure that:
 - (a) no more native mammals, birds or plants are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
 - (b) only small numbers of native mammals or birds are killed and in no case more native mammals or birds are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and
 - (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
- 4. Any species of native mammals, birds and plants listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.
- 5. A permit shall not be issued to take a Specially Protected Species unless the taking:
 - (a) is for a compelling scientific purpose;
 - (b) will not jeopardize the survival or recovery of that species or local population; and
 - (c) uses non-lethal techniques where appropriate.
- 6. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

**Article 4 Introduction of non-native species,
parasites and diseases**

- 1. No species of animal or plant not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water in the Antarctic Treaty area except in accordance with a permit.

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty —*continued***

2. Dogs shall not be introduced onto land or ice shelves and dogs currently in those areas shall be removed by April 1, 1994.
3. Permits under paragraph 1 above shall be issued to allow the importation only of the animals and plants listed in Appendix B to this Annex and shall specify the species, numbers and, if appropriate, age and sex and precautions to be taken to prevent escape or contact with native fauna and flora.
4. Any plant or animal for which a permit has been issued in accordance with paragraphs 1 and 3 above, shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation. Any other plant or animal introduced into the Antarctic Treaty area not native to that area, including any progeny, shall be removed or disposed of, by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna.
5. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol and Appendix C to this Annex.
6. Each Party shall require that precautions, including those listed in Appendix C to this Annex, be taken to prevent the introduction of micro-organisms (e.g., viruses, bacteria, parasites, yeasts, fungi) not present in the native fauna and flora.

Article 5 Information

Each Party shall prepare and make available information setting forth, in particular, prohibited activities and providing lists of Specially Protected Species and relevant Protected Areas to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty —*continued***

Article 6 Exchange of information

1. The Parties shall make arrangements for:
 - (a) collecting and exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird or plant taken annually in the Antarctic Treaty area;
 - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection;
 - (c) establishing a common form in which this information shall be submitted by Parties in accordance with paragraph 2 below.
2. Each Party shall inform the other Parties as well as the Committee before the end of November of each year of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

**Article 7 Relationship with other agreements
outside the Antarctic Treaty system**

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

Article 8 Review

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

Article 9 Amendment or modification

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been

**Annex II to the Protocol on Environmental
Protection to the Antarctic Treaty —continued**

approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Appendices to the Annex

Appendix A—Specially protected species

All species of the genus *Arctocephalus*, Fur Seals. *Ommatophoca rossii*, Ross Seal.

*Appendix B—Importation of animals and
plants*

The following animals and plants may be imported into the Antarctic Treaty area in accordance with permits issued under Article 4 of this Annex:

- (a) domestic plants; and
- (b) laboratory animals and plants including viruses, bacteria, yeasts and fungi.

*Appendix C—Precautions to prevent
introduction of micro-organisms*

- 1 Poultry. No live poultry or other living birds shall be brought into the Antarctic Treaty area. Before dressed poultry is packaged for shipment to the Antarctic Treaty area, it shall be inspected for evidence of disease, such as Newcastle's Disease, tuberculosis, and yeast infection. Any poultry or parts not consumed shall be removed from the Antarctic Treaty area or dis-

Appendix C—continued

- posed of by incineration or equivalent means that eliminates risks to native flora and fauna.
- 2 The importation of non-sterile soil shall be avoided to the maximum extent practicable.

Annex III to the Protocol on Environmental Protection to the Antarctic Treaty

Waste disposal and waste management

Article 1 General obligations

1. This Annex shall apply to activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities.
2. The amount of wastes produced or disposed of in the Antarctic Treaty area shall be reduced as far as practicable so as to minimise impact on the Antarctic environment and to minimise interference with the natural values of Antarctica, with scientific research and with other uses of Antarctica which are consistent with the Antarctic Treaty.
3. Waste storage, disposal and removal from the Antarctic Treaty area, as well as recycling and source reduction, shall be essential considerations in the planning and conduct of activities in the Antarctic Treaty area.
4. Wastes removed from the Antarctic Treaty area shall, to the maximum extent practicable, be returned to the country from which the activities generating the waste were organized or to any other country in which arrangements have been made for the disposal of such wastes in accordance with relevant international agreements.
5. Past and present waste disposal sites on land and abandoned work sites of Antarctic activities shall be cleaned up by the generator of such wastes and the user of such sites. This obligation shall not be interpreted as requiring:

- (a) the removal of any structure designated as a historic site or monument; or
- (b) the removal of any structure or waste material in circumstances where the removal by any practical option would result in greater adverse environmental impact than leaving the structure or waste material in its existing location.

Article 2 Waste disposal by removal from the Antarctic Treaty area

1. The following wastes, if generated after entry into force of this Annex, shall be removed from the Antarctic Treaty area by the generator of such wastes:
 - (a) radio-active materials;
 - (b) electrical batteries;
 - (c) fuel, both liquid and solid;
 - (d) wastes containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;
 - (e) poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products which contain additives that could produce harmful emissions if incinerated;
 - (f) all other plastic wastes, except low density polyethylene containers (such as bags for storing wastes), provided that such containers shall be incinerated in accordance with Article 3(1);
 - (g) fuel drums; and
 - (h) other solid, non-combustible wastes;provided that the obligation to remove drums and solid non-combustible wastes contained in subparagraphs (g) and (h) above shall not apply in circumstances where the removal of such wastes by any practical option would result in greater adverse environmental impact than leaving them in their existing locations.
2. Liquid wastes which are not covered by paragraph 1 above and sewage and domestic liquid wastes, shall, to the maximum extent practicable, be removed from the Antarctic Treaty area by the generator of such wastes.

3. The following wastes shall be removed from the Antarctic Treaty area by the generator of such wastes, unless incinerated, autoclaved or otherwise treated to be made sterile:
 - (a) residues of carcasses of imported animals;
 - (b) laboratory culture of micro-organisms and plant pathogens; and
 - (c) introduced avian products.

Article 3 Waste disposal by incineration

1. Subject to paragraph 2 below, combustible wastes, other than those referred to in Article 2(1), which are not removed from the Antarctic Treaty area shall be burnt in incinerators which to the maximum extent practicable reduce harmful emissions. Any emission standards and equipment guidelines which may be recommended by, inter alia, the Committee and the Scientific Committee on Antarctic Research shall be taken into account. The solid residue of such incineration shall be removed from the Antarctic Treaty area.
2. All open burning of wastes shall be phased out as soon as practicable, but no later than the end of the 1998/1999 season. Pending the completion of such phase-out, when it is necessary to dispose of wastes by open burning, allowance shall be made for the wind direction and speed and the type of wastes to be burnt to limit particulate deposition and to avoid such deposition over areas of special biological, scientific, historic, aesthetic or wilderness significance including, in particular, areas accorded protection under the Antarctic Treaty.

Article 4 Other waste disposal on land

1. Wastes not removed or disposed of in accordance with Articles 2 and 3 shall not be disposed of onto ice-free areas or into fresh water systems.
2. Sewage, domestic liquid wastes and other liquid wastes not removed from the Antarctic Treaty area in accordance with Article 2, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or the grounded ice-sheet, provided that such wastes which are generated by stations located inland on ice shelves or on the grounded ice-sheet may be disposed of in deep ice pits where such disposal is the only

practicable option. Such pits shall not be located on known ice-flow lines which terminate at ice-free areas or in areas of high ablation.

3. Wastes generated at field camps shall, to the maximum extent practicable, be removed by the generator of such wastes to supporting stations or ships for disposal in accordance with this Annex.

Article 5 Disposal of waste in the sea

1. Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment and provided that:
 - (a) such discharge is located, wherever practicable, where conditions exist for initial dilution and rapid dispersal; and
 - (b) large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration.
2. The by-product of sewage treatment by the Rotary Biological Contacter process or similar processes may be disposed of into the sea provided that such disposal does not adversely affect the local environment, and provided also that any such disposal at sea shall be in accordance with Annex IV to the Protocol.

Article 6 Storage of waste

All wastes to be removed from the Antarctic Treaty area, or otherwise disposed of, shall be stored in such a way as to prevent their dispersal into the environment.

Article 7 Prohibited products

No polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, chips or similar forms of packaging, or pesticides (other than those required for scientific, medical or hygiene purposes) shall be introduced onto land or ice shelves or into water in the Antarctic Treaty area.

Article 8 Waste management planning

1. Each Party which itself conducts activities in the Antarctic Treaty area shall, in respect of those activities, establish a waste disposal classification system as a basis for recording wastes and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and associated logistic support. To that end, wastes produced shall be classified as:
 - (a) sewage and domestic liquid wastes (Group 1);
 - (b) other liquid wastes and chemicals, including fuels and lubricants (Group 2);
 - (c) solids to be combusted (Group 3);
 - (d) other solid wastes (Group 4); and
 - (e) radioactive material (Group 5).
2. In order to reduce further the impact of waste on the Antarctic environment, each such Party shall prepare and annually review and update its waste management plans (including waste reduction, storage and disposal), specifying for each fixed site, for field camps generally, and for each ship (other than small boats that are part of the operations of fixed sites or of ships and taking into account existing management plans for ships):
 - (a) programmes for cleaning up existing waste disposal sites and abandoned work sites;
 - (b) current and planned waste management arrangements, including final disposal;
 - (c) current and planned arrangements for analysing the environmental effects of waste and waste management; and
 - (d) other efforts to minimise any environmental effects of wastes and waste management.
3. Each such Party shall, as far as is practicable, also prepare an inventory of locations of past activities (such as traverses, fuel depots, field bases, crashed aircraft) before the information is lost, so that such locations can be taken into account in planning future scientific programmes (such as snow chemistry, pollutants in lichens or ice core drilling).

Article 9 Circulation and review of waste management plans

1. The waste management plans prepared in accordance with Article 8, reports on their implementation, and the inventories referred to in Article 8(3), shall be included in the annual exchanges of information in accordance with Articles III and VII of the Antarctic Treaty and related Recommendations under Article IX of the Antarctic Treaty.
2. Each Party shall send copies of its waste management plans, and reports on their implementation and review, to the Committee.
3. The Committee may review waste management plans and reports thereon and may offer comments, including suggestions for minimising impacts and modifications and improvement to the plans, for the consideration of the Parties.
4. The Parties may exchange information and provide advice on, inter alia, available low waste technologies, reconversion of existing installations, special requirements for effluents, and appropriate disposal and discharge methods.

Article 10 Management practices

Each Party shall:

- (a) designate a waste management official to develop and monitor waste management plans; in the field, this responsibility shall be delegated to an appropriate person at each site;
- (b) ensure that members of its expeditions receive training designed to limit the impact of its operations on the Antarctic environment and to inform them of requirements of this Annex; and
- (c) discourage the use of poly-vinyl chloride (PVC) products and ensure that its expeditions to the Antarctic Treaty area are advised of any PVC products they may introduce into that area in order that these products may be removed subsequently in accordance with this Annex.

Article 11 Review

This Annex shall be subject to regular review in order to ensure that it is updated to reflect improvement in waste disposal technology

and procedures and to ensure thereby maximum protection of the Antarctic environment.

Article 12 Cases of emergency

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency, shall be circulated immediately to all Parties and to the Committee.

Article 13 Amendment or modification

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the amendment.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Annex IV to the Protocol on Environmental Protection to the Antarctic Treaty

Prevention of marine pollution

Article 1 Definitions

For the purposes of this Annex:

- (a) “discharge” means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;
- (b) “garbage” means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated dur-

- ing the normal operation of the ship, except those substances which are covered by Articles 3 and 4;
- (c) “MARPOL 73/78” means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto and by any other amendment in force thereafter;
- (d) “noxious liquid substance” means any noxious liquid substance as defined in Annex II of MARPOL 73/78;
- (e) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined oil products (other than petrochemicals which are subject to the provisions of Article 4);
- (f) “oily mixture” means a mixture with any oil content; and
- (g) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

Article 2 Application

This Annex applies, with respect to each Party, to ships entitled to fly its flag and to any other ship engaged in or supporting its Antarctic operations, while operating in the Antarctic Treaty area.

Article 3 Discharge of oil

1. Any discharge into the sea of oil or oily mixture shall be prohibited, except in cases permitted under Annex I of MARPOL 73/78. While operating in the Antarctic Treaty area, ships shall retain on board all sludge, dirty ballast, tank washing waters and other oily residues and mixtures which may not be discharged into the sea. Ships shall discharge these residues only outside the Antarctic Treaty area, at reception facilities or as otherwise permitted under Annex I of MARPOL 73/78.
2. This Article shall not apply to:
 - (a) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:
 - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and

- (ii) except if the owner or the Master acted either with intent to cause damage, or recklessly and with the knowledge that damage would probably result; or
- (b) the discharge into the sea of substances containing oil which are being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

Article 4 Discharge of noxious liquid substances

The discharge into the sea of any noxious liquid substance, and any other chemical or other substances, in quantities or concentrations that are harmful to the marine environment, shall be prohibited.

Article 5 Disposal of garbage

1. The disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets, and plastic garbage bags, shall be prohibited.
2. The disposal into the sea of all other garbage, including paper products, rags, glass, metal, bottles, crockery, incineration ash, dunnage, lining and packing materials shall be prohibited.
3. The disposal into the sea of food wastes may be permitted when they have been passed through a comminuter or grinder, provided that such disposal shall, except in cases permitted under Annex V of MARPOL 73/78, be made as far as practicable from land and ice shelves but in any case not less than 12 nautical miles from the nearest land or ice shelf. Such comminuted or ground food wastes shall be capable of passing through a screen with openings no greater than 25 millimeters.
4. When a substance or material covered by this article is mixed with other such substance or material for discharge or disposal, having different disposal or discharge requirements, the most stringent disposal or discharge requirements shall apply.
5. The provisions of paragraphs 1 and 2 above shall not apply to:
 - (a) the escape of garbage resulting from damage to a ship or its equipment provided all reasonable precautions have been taken, before and after the occurrence of the dam-

- age, for the purpose of preventing or minimising the escape; or
- (b) the accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.
6. The Parties shall, where appropriate, require the use of garbage record books.

Article 6 Discharge of sewage

1. Except where it would unduly impair Antarctic operations:
- (a) each Party shall eliminate all discharge into the sea of untreated sewage (“sewage” being defined in Annex IV of MARPOL 73/78) within 12 nautical miles of land or ice shelves;
- (b) beyond such distance, sewage stored in a holding tank shall not be discharged instantaneously but at a moderate rate and, where practicable, while the ship is en route at a speed of no less than 4 knots.
- This paragraph does not apply to ships certified to carry not more than 10 persons.
2. The Parties shall, where appropriate, require the use of sewage record books.

Article 7 Cases of emergency

1. Articles 3, 4, 5 and 6 of this Annex shall not apply in cases of emergency relating to the safety of a ship and those on board or saving life at sea.
2. Notice of activities undertaken in cases of emergency, shall be circulated immediately to all Parties and to the Committee.

Article 8 Effect on dependent and associated ecosystems

In implementing the provisions of this Annex, due consideration shall be given to the need to avoid detrimental effects on dependent and associated ecosystems, outside the Antarctic Treaty area.

Article 9 Ship retention capacity and reception facilities

1. Each Party shall undertake to ensure that all ships entitled to fly its flag and any other ship engaged in or supporting its Antarctic operations, before entering the Antarctic Treaty area, are fitted with a tank or tanks of sufficient capacity on board for the retention of all sludge, dirty ballast, tank washing water and other oily residues and mixtures, and have sufficient capacity on board for the retention of garbage, while operating in the Antarctic Treaty area and have concluded arrangements to discharge such oily residues and garbage at a reception facility after leaving that area. Ships shall also have sufficient capacity on board for the retention of noxious liquid substances.
2. Each Party at whose ports ships depart en route to or arrive from the Antarctic Treaty area undertakes to ensure that as soon as practicable adequate facilities are provided for the reception of all sludge, dirty ballast, tank washing water, other oily residues and mixtures, and garbage from ships, without causing undue delay, and according to the needs of the ships using them.
3. Parties operating ships which depart to or arrive from the Antarctic Treaty area at ports of other Parties shall consult with those Parties with a view to ensuring that the establishment of port reception facilities does not place an inequitable burden on Parties adjacent to the Antarctic Treaty area.

Article 10 Design, construction, manning and equipment of ships

In the design, construction, manning and equipment of ships engaged in or supporting Antarctic operations, each Party shall take into account the objectives of this Annex.

Article 11 Sovereign immunity

1. This Annex shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act

- in a manner consistent, so far as is reasonable and practicable, with this Annex.
2. In applying paragraph 1 above, each Party shall take into account the importance of protecting the Antarctic environment.
 3. Each Party shall inform the other Parties of how it implements this provision.
 4. The dispute settlement procedure set out in Articles 18 to 20 of the Protocol shall not apply to this Article.

Article 12 Preventive measures and emergency preparedness and response

1. In order to respond more effectively to marine pollution emergencies or the threat thereof in the Antarctic Treaty area, the Parties, in accordance with Article 15 of the Protocol, shall develop contingency plans for marine pollution response in the Antarctic Treaty area, including contingency plans for ships (other than small boats that are part of the operations of fixed sites or of ships) operating in the Antarctic Treaty area, particularly ships carrying oil as cargo, and for oil spills, originating from coastal installations, which enter into the marine environment. To this end they shall:
 - (a) co-operate in the formulation and implementation of such plans; and
 - (b) draw on the advice of the Committee, the International Maritime Organization and other international organizations.
2. The Parties shall also establish procedures for co-operative response to pollution emergencies and shall take appropriate response actions in accordance with such procedures.

Article 13 Review

The Parties shall keep under continuous review the provisions of this Annex and other measures to prevent, reduce and respond to pollution of the Antarctic marine environment, including any amendments and new regulations adopted under MARPOL 73/78, with a view to achieving the objectives of this Annex.

Article 14 Relationship with MARPOL 73/78

With respect to those Parties which are also Parties to MARPOL 73/78, nothing in this Annex shall derogate from the specific rights and obligations thereunder.

Article 15 Amendment or modification

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Annex V to the Protocol on Environmental Protection to the Antarctic Treaty

Area protection and management

Article 1 Definitions

For the purposes of this Annex:

- (a) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- (b) “permit” means a formal permission in writing issued by an appropriate authority;
- (c) “Management Plan” means a plan to manage the activities and protect the special value or values in an Antarctic Specially Protected Area or an Antarctic Specially Managed Area.

Article 2 Objectives

For the purposes set out in this Annex, any area, including any marine area, may be designated as an Antarctic Specially Protected Area or

an Antarctic Specially Managed Area. Activities in those Areas shall be prohibited, restricted or managed in accordance with Management Plans adopted under the provisions of this Annex.

Article 3 Antarctic Specially Protected Areas

1. Any area, including any marine area, may be designated as an Antarctic Specially Protected Area to protect outstanding environmental, scientific, historic, aesthetic or wilderness values, any combination of those values, or ongoing or planned scientific research.
2. Parties shall seek to identify, within a systematic environmental-geographical framework, and to include in the series of Antarctic Specially Protected Areas:
 - (a) areas kept inviolate from human interference so that future comparisons may be possible with localities that have been affected by human activities;
 - (b) representative examples of major terrestrial, including glacial and aquatic, ecosystems and marine ecosystems;
 - (c) areas with important or unusual assemblages of species, including major colonies of breeding native birds or mammals;
 - (d) the type locality or only known habitat of any species;
 - (e) areas of interest to ongoing or planned scientific research;
 - (f) examples of outstanding geological, glaciological or geomorphological features;
 - (g) areas of outstanding aesthetic and wilderness value;
 - (h) sites or monuments of recognised historic value; and
 - (i) such other areas as may be appropriate to protect the values set out in paragraph 1 above.
3. Specially Protected Areas and Sites of Special Scientific Interest designated as such by past Antarctic Treaty Consultative Meetings are hereby designated as Antarctic Specially Protected Areas and shall be renamed and renumbered accordingly.
4. Entry into an Antarctic Specially Protected Area shall be prohibited except in accordance with a permit issued under Article 7.

Article 4 Antarctic Specially Managed Areas

1. Any area, including any marine area, where activities are being conducted or may in the future be conducted, may be designated as an Antarctic Specially Managed Area to assist in the planning and co-ordination of activities, avoid possible conflicts, improve co-operation between Parties or minimise environmental impacts.
2. Antarctic Specially Managed Areas may include:
 - (a) areas where activities pose risks of mutual interference or cumulative environmental impacts; and
 - (b) sites or monuments of recognised historic value.
3. Entry into an Antarctic Specially Managed Area shall not require a permit.
4. Notwithstanding paragraph 3 above, an Antarctic Specially Managed Area may contain one or more Antarctic Specially Protected Areas, entry into which shall be prohibited except in accordance with a permit issued under Article 7.

Article 5 Management Plans

1. Any Party, the Committee, the Scientific Committee for Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose an area for designation as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area by submitting a proposed Management Plan to the Antarctic Treaty Consultative Meeting.
2. The area proposed for designation shall be of sufficient size to protect the values for which the special protection or management is required.
3. Proposed Management Plans shall include, as appropriate:
 - (a) a description of the value or values for which special protection or management is required;
 - (b) a statement of the aims and objectives of the Management Plan for the protection or management of those values;
 - (c) management activities which are to be undertaken to protect the values for which special protection or management is required;
 - (d) a period of designation, if any;

- (e) a description of the area, including:
 - (i) the geographical co-ordinates, boundary markers and natural features that delineate the area;
 - (ii) access to the areas by land, sea or air including marine approaches and anchorages, pedestrian and vehicular routes within the area, and aircraft routes and landing areas;
 - (iii) the location of structures, including scientific stations, research or refuge facilities, both within the area and near to it; and
 - (iv) the location in or near the area of other Antarctic Specially Protected Areas or Antarctic Specially Managed Areas designated under this Annex, or other protected areas designated in accordance with measures adopted under other components of the Antarctic Treaty system;
- (f) the identification of zones within the area, in which activities are to be prohibited, restricted or managed for the purpose of achieving the aims and objectives referred to in subparagraph (b) above;
- (g) maps and photographs that show clearly the boundary of the area in relation to surrounding features and key features within the area;
- (h) supporting documentation;
- (i) in respect of an area proposed for designation as an Antarctic Specially Protected Area, a clear description of the conditions under which permits may be granted by the appropriate authority regarding:
 - (i) access to and movement within or over the area;
 - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
 - (iii) the installation, modification, or removal of structures;
 - (iv) the location of field camps;
 - (v) restrictions on materials and organisms which may be brought into the area;
 - (vi) the taking of or harmful interference with native flora and fauna;

- (vii) the collection or removal of anything not brought into the area by the permit-holder;
- (viii) the disposal of waste;
- (ix) measures that may be necessary to ensure that the aims and objectives of the Management Plan can continue to be met; and
- (x) requirements for reports to be made to the appropriate authority regarding visits to the area;
- (j) in respect of an area proposed for designation as an Antarctic Specially Managed Area, a code of conduct regarding:
 - (i) access to and movement within or over the area;
 - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
 - (iii) the installation, modification, or removal of structures;
 - (iv) the location of field camps;
 - (v) the taking of or harmful interference with native flora and fauna;
 - (vi) the collection or removal of anything not brought into the area by the visitor;
 - (vii) the disposal of waste; and
 - (viii) any requirements for reports to be made to the appropriate authority regarding visits to the area; and
- (k) provisions relating to the circumstances in which parties should seek to exchange information in advance of activities which they propose to conduct.

Article 6 Designation procedures

1. Proposed Management Plans shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, as appropriate, to the Commission for the Conservation of Antarctic Marine Living Resources. In formulating its advice to the Antarctic Treaty Consultative Meeting, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research and, as appropriate, by the Commission for the Conservation of Antarctic Marine Living Resources. Thereafter Management Plans may be ap-

proved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the Plan shall be deemed to have been approved 90 days after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.

2. Having regard to the provisions of Articles 4 and 5 of the Protocol, no marine area shall be designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area without the prior approval of the Commission for the Conservation of Antarctic Marine Living Resources.
3. Designation of an Antarctic Specially Protected Area or an Antarctic Specially Managed Area shall be for an indefinite period unless the Management Plan provides otherwise. A review of a Management Plan shall be initiated at least every five years. The Plan shall be updated as necessary.
4. Management Plans may be amended or revoked in accordance with paragraph 1 above.
5. Upon approval Management Plans shall be circulated promptly by the Depositary to all Parties. The Depositary shall maintain a record of all currently approved Management Plans.

Article 7 Permits

1. Each Party shall appoint an appropriate authority to issue permits to enter and engage in activities within an Antarctic Specially Protected Area in accordance with the requirements of the Management Plan relating to that Area. The permit shall be accompanied by the relevant sections of the Management Plan and shall specify the extent and location of the Area, the authorised activities and when, where and by whom the activities are authorised and any other conditions imposed by the Management Plan.
2. In the case of a Specially Protected Area designated as such by past Antarctic Treaty Consultative Meetings which does not have a Management Plan, the appropriate authority may

issue a permit for a compelling scientific purpose which cannot be served elsewhere and which will not jeopardise the natural ecological system in that Area.

3. Each Party shall require a permit-holder to carry a copy of the permit while in the Antarctic Specially Protected Area concerned.

Article 8 Historic Sites and Monuments

1. Sites or monuments of recognised historic value which have been designated as Antarctic Specially Protected Areas or Antarctic Specially Managed Areas, or which are located within such Areas, shall be listed as Historic Sites and Monuments.
2. Any Party may propose a site or monument of recognised historic value which has not been designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area, or which is not located within such an Area, for listing as a Historic Site or Monument. The proposal for listing may be approved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the proposal shall be deemed to have been approved 90 days after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.
3. Existing Historic Sites and Monuments which have been listed as such by previous Antarctic Treaty Consultative Meetings shall be included in the list of Historic Sites and Monuments under this Article.
4. Listed Historic Sites and Monuments shall not be damaged, removed or destroyed.
5. The list of Historic Sites and Monuments may be amended in accordance with paragraph 2 above. The Depositary shall maintain a list of current Historic Sites and Monuments.

Article 9 Information and publicity

1. With a view to ensuring that all persons visiting or proposing to visit Antarctica understand and observe the provisions of this Annex, each Party shall make available information setting forth, in particular:
 - (a) the location of Antarctic Specially Protected Areas and Antarctic Specially Managed Areas;
 - (b) listing and maps of those Areas;
 - (c) the Management Plans, including listings of prohibitions relevant to each Area;
 - (d) the location of Historic Sites and Monuments and any relevant prohibition or restriction.
2. Each Party shall ensure that the location and, if possible, the limits, of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are shown on its topographic maps, hydrographic charts and in other relevant publications.
3. Parties shall co-operate to ensure that, where appropriate, the boundaries of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are suitably marked on the site.

Article 10 Exchange of information

1. The Parties shall make arrangements for:
 - (a) collecting and exchanging records, including records of permits and reports of visits, including inspection visits, to Antarctic Specially Protected Areas and reports of inspection visits to Antarctic Specially Managed Areas;
 - (b) obtaining and exchanging information on any significant change or damage to any Antarctic Specially Managed Area, Antarctic Specially Protected Area or Historic Site or Monument; and
 - (c) establishing common forms in which records and information shall be submitted by Parties in accordance with paragraph 2 below.
2. Each Party shall inform the other Parties and the Committee before the end of November of each year of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

3. Each Party conducting, funding or authorising research or other activities in Antarctic Specially Protected Areas or Antarctic Specially Managed Areas shall maintain a record of such activities and in the annual exchange of information in accordance with the Treaty shall provide summary descriptions of the activities conducted by persons subject to its jurisdiction in such areas in the preceding year.
4. Each Party shall inform the other Parties and the Committee before the end of November each year of measures it has taken to implement this Annex, including any site inspections and any steps it has taken to address instances of activities in contravention of the provisions of the approved Management Plan for an Antarctic Specially Protected Area or Antarctic Specially Managed Area.

Article 11 Cases of emergency

1. The restrictions laid down and authorised by this Annex shall not apply in cases of emergency involving safety of human life or of ships, aircraft, or equipment and facilities of high value or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 12 Amendment or modification

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter

become effective as to any other Party when notice of approval by it has been received by the Depositary.

Contents

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Notes

1 General

This is a reprint of the Antarctica (Environmental Protection) Act 1994. The reprint incorporates all the amendments to the Act as at 25 February 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Antarctica (Environmental Protection) Amendment Act 2012 (2012 No 3)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Bail Act 2000 (2000 No 38): section 74(2)

District Courts Amendment Act 1998 (1998 No 76): section 7

Antarctica (Environmental Protection) Act Commencement Order 1998 (SR 1998/1)

Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74): section 5(4)